HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.5026 of 1998

14.6.2007

Between

D.Prabhakar Reddy ..Petitioner

AND

The Commissioner for Cooperation and Registrar of Cooperative Societies, Government of A.P. and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.5026 of 1998

This writ petition has been instituted by a Paid Secretary of Primary Agricultural Cooperative Society at Kazipuram seeking a direction to the respondents to pay him the subsistence allowance as he had been placed under suspension pending disciplinary proceedings. It is the case of the writ petitioner that he was initially appointed as a Paid Secretary and was transferred in the same capacity to the Primary Agricultural Cooperative Society at Gulyam, Kurnool District where he worked upto 1990 and upon abolition of the common cadre, he came to be allotted to the Holagunda Primary Agricultural Cooperative Society by virtue of the power exercised by the Registrar of Cooperative societies. On an allegation that the writ petitioner had indulged in misappropriation of funds of the Society at Gulyam, by proceedings dated 22.2.1993, he has been placed under suspension by the second respondent.

The writ petitioner's grievance in this writ petition is that he had not been paid his monthly subsistence allowance. Therefore, he instituted the present writ petition as the special byelaw 12 approved for the Society had specifically provided for payment of subsistence allowance to the employees placed under suspension. With regard to the legal status of the special byelaws, this Court had considered the issue in the judgment rendered in **Pinapatruni Nagabhushanam v.**

Govt. of A.P., [1] and observed as under:

> "12. Section 116-AA of the Act abolished Centralized services for certain categories of employees and obligates the Registrar of the Cooperative Societies to a lot such decaderised employees to such Primary Agricultural Credit Societies, as he may consider fit. Consequent on the decaderisation of employees, Rule 72 (3) of A.P. Cooperative Societies Rules, 1964 (for short 'the Rules') set out guidelines for decaderisation of the posts of Secretaries, their allotment to a Society and for other incidental areas of regulation of the services of such decaderised Secretaries, Sub rule (3) of Rule 72 of the Rules specifies that "the Secretary, on allotment to a Society, shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed from the funds of the said society, and that the service conditions of the Secretaries working in the societies shall be governed by such service regulations as may be framed by the Registrar for adoption by the Societies". Sub rule (4) of Rule 72 of the Rules ordains that subject to the disciplinary procedure laid down in the Service Regulations, as may be issued by the Registrar of Cooperative Societies and to be adopted by the Societies, the Society shall exercise disciplinary control over the Secretary. There are other incidental and house keeping provisions for regulating other conditions of service of the Secretaries with which, however, we are not concerned in this *lis.*
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> 13. In the light of the above extent and degree of control exercised by the Registrar of Cooperative Societies including in respect of the framing of binding bye laws or service conditions regulating the services of Secretaries working in the Primary Agricultural Cooperative Credit Societies, it would be reasonable to infer that the service bye laws of a cooperative society insofar as they deal with the service conditions of a Secretary, have a statutory origin under Rule 72 of the Rules and having been framed by the Registrar have also a statutory

> flavour and statutory underpinnings. On this inference, declining adjudication of service grievance of a Paid Secretary on the ground that a Primary Agricultural Cooperative Credit Society may not be an agency or instrumentality of the State or other authority within the meaning of Article 12 of the Constitution of India, may not be proper.

Therefore, the special byelaws which enable the payment of subsistence allowance give rise to this *lis*. An employee who is placed under suspension pending enquiry has got to be paid the subsistence allowance, which by its very nature is intended to see that the employee as well as his dependants will be able to survive the ordeal of facing the disciplinary proceedings. Therefore, this right to receive this allowance has been recognized for the very survival of the soul of such employee. The payment of subsistence allowance at an absurdly low rate, has been criticized and commented upon as violative of the very right to life itself. Hence all model employers have been adopting that atleast 50% of the wages last drawn at the time when an employee came to be placed under suspension, as the quantum of minimum subsistence allowance liable to be paid, provided of course, the employee concerned is extending the necessary cooperation for expeditious completion of the contemplated disciplinary proceedings. A right can be created in favour of the employer to appropriately downsize the quantum of subsistence allowance, if it had reasonable basis and material before it to arrive at the conclusion that the employee concerned is deliberately and purposefully delaying the completion of the disciplinary proceedings. In the absence of any such material, the minimum assured subsistence allowance has got to be paid to the employee concerned who has been placed under suspension.

I therefore direct respondents 1 to 3 to ensure that the writ petitioner is paid the necessary subsistence allowance for the period he has been placed under such suspension.

The District Cooperative Officer, Kurnool – second respondent herein shall also decide as to which Society should contribute to the payment of the subsistence allowance, for, the writ petitioner was actually working with the fourth respondent Primary Agricultural Cooperative Society at Kazipuram when he was placed under suspension, but however, he had been placed under suspension pending enquiry into his alleged conduct of misappropriation of funds belonging to the Primary Agricultural Cooperative Society at Gulyam. It is therefore appropriate that the second respondent – District Cooperative Officer to take a decision as to which Society must contribute for the monthly subsistence allowance to be paid to the petitioner and if he comes to the conclusion that both the Societies must contribute to the liability, he may fix up the proportion in which each society must make the contribution, but however, he will ensure that the subsistence allowance is paid regularly to the writ petitioner.

Since the disciplinary proceedings have been initiated long time back, it is only hoped that they would have reached their logical conclusion by this time. If the disciplinary proceedings have not been terminated so far, the second respondent will ensure that the disciplinary proceedings are brought to an end as expeditiously as possible, at any rate not later than 30.9.2007.

With this, the writ petition stands disposed of. No costs.

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NOOTY RAMA MOHANA RAO.J.

14.6.2007

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[1] 2002 (6) ALT 693